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DATO' KAMARUZAMAN MUHAMMAD ARIF v. RASIDAH ABDUL RAHMAN

HIGH COURT MALAYA, SHAH ALAM
FAIZAH JAMALUDIN J
[CIVIL SUIT NO: BA-22NCVC-296-07-2019]
13 JUNE 2023

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Abstract – *Express malice may be evidenced (i) extrinsically from the facts and circumstances in which the statement is made; or (ii) intrinsically from the words in the impugned statement itself. In this action for defamation, the plaintiff is able to establish, on a balance of probabilities, that the impugned statements referred to the plaintiff, were published to a third person, and they had defamatory imputations. As the plaintiff also suffered damage to his reputation, appropriate damages ought to be awarded.*

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TORT: *Defamation – Libel – Impugned statements – Whether referred to claimant and published to third person – Whether had defamatory imputations – Whether made with express malice – Whether claimant suffered damage to reputation – Amount of damages ought to be awarded*

E

TORT: *Defamation – Slander – Whether impugned slanderous words uttered during mediation breaks at court – Whether slanderous statements proved to have been made at material time and place – Whether claim for slander ought to be dismissed*

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This was the plaintiff's action against the defendant for libel and slander. The plaintiff claimed that the defendant had falsely and maliciously defamed him in a series of libellous and slanderous statements published on different occasions. The plaintiff was an advocate and solicitor and was, at all material times, a senior partner of the law firm Messrs Kamaruzaman Arif Amran & Chong ('KAAC') while the defendant was the founder and chairman of the foundation, Yayasan Sekebun Bunga ('YSB'). In 2012, Permodalan Negeri Selangor Berhad ('PNSB'), a Selangor State Government company owned by Menteri Besar Incorporated, agreed to sell YSB, PNSB's right to the lease of certain units in the Al Marwa Tower in Mekah, Saudi Arabia ('Saudi properties'). In the sales and purchase agreement ('SPA') between PNSB and YSB, PNSB was represented by KAAC. The SPA was executed under seal by both parties. The defendant, as a director of YSB, was one of the witnesses before whom YSB's common seal was affixed. Pending completion of the SPA, YSB had appointed agents to manage the Saudi properties, to account for the rental received and to pay PNSB 80% of the net rental received from the Saudi properties. YSB did not pay PNSB any of its share of the rental received from the Saudi properties. Consequently, PNSB commenced a civil

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suit at the Sessions Court ('civil suit') against YSB and two other companies, which PNSB alleged the proceeds of the rental received from the Saudi properties were channelled to. YSB also failed to pay the balance of the purchase price due under the SPA. Subsequently, PNSB through its solicitors KAAC, terminated the SPA and forfeited the deposit paid by YSB. PNSB also demanded YSB to deliver vacant possession of the Saudi properties. After PNSB terminated the SPA and forfeited YSB's deposit, the defendant made publications against the plaintiff, and the impugned statements in these publications were the subject matter of this action by the plaintiff against the defendant. On 4 February 2015, the defendant filed a complaint of misconduct against the plaintiff to the Advocates and Solicitors Disciplinary Board ('DB') in relation to PNSB's civil action against YSB. The defendant stated that the plaintiff had included in the bundle of documents in the civil suit, a statutory declaration of a witness, knowing that the witness had affirmed the statutory declaration before the plaintiff and not a Commissioner for Oaths. A Disciplinary Committee ('DC') was empanelled to enquire into the complaint against the plaintiff. In their written submission to the DC, the defendant's solicitors included*, inter alia*, by way of additional events the defendant's allegations in a police report against the plaintiff ('additional allegations'). The DC found against the plaintiff and recommended that cause for disciplinary action existed. The DB, nevertheless, ordered that the complaint against the plaintiff be dismissed. On 23 February 2016, the defendant wrote to the then Menteri Besar of Selangor ('MB of Selangor'), where she appealed against the forfeiture of YSB's deposit under the SPA ('letter of appeal'). The defendant referred to the police report and repeated the allegations she had made against the plaintiff in the said police report. The plaintiff's case was that the contents of the defendant's reply to the DB, the contents of her additional allegations to the DC and the contents of her letter of appeal to the MB of Selangor were defamatory of the plaintiff. The plaintiff pleaded that the defendant had defamed the plaintiff in his professional capacity, as an advocate and solicitor, by publishing the statements ('further impugned statements') which referred to the plaintiff, meant and/or were understood to mean that the plaintiff was a habitual liar, and were defamatory of him. The plaintiff also pleaded that the additional impugned statements in the letter of appeal referred to the plaintiff, were meant and/or understood to mean that the plaintiff was a crook, fraudster and a conspirator, and were defamatory of the plaintiff. In the written submissions in the DC proceedings, the plaintiff pleaded that the supplementary impugned statements were defamatory of the plaintiff and that since the additional allegations were raised during the summation stage of the DC proceedings, he was not afforded the opportunity to respond to these additional allegations by the defendant. The plaintiff submitted that the further impugned statements in the reply and the additional impugned statements in the letter of appeal, in their natural and

ordinary meaning, meant and/or were understood to mean that the plaintiff was, *inter alia*, a corrupt and unscrupulous lawyer and had failed to discharge his professional duties as an advocate and solicitor. As for the slander issue, the plaintiff claimed that on or around 26 January 2015, during mediation breaks at the Mediation Centre of the Sessions Court, the defendant had maliciously made slanderous remarks against the plaintiff, that she had defamed the plaintiff to PNSB's Head of Legal, PW2, and in the presence of solicitors of both parties ('impugned slanderous statements') which, in their natural and ordinary meaning meant and/or were understood to mean that the plaintiff had bribed the authorities of PNSB and had acted in an unethical manner in discharging his professional duties as an advocate and solicitor. The plaintiff pleaded that by reason of the communication and/or publication of (i) the libel in the further impugned statements, the additional impugned statements and the supplementary impugned statements; and (ii) the slander in the impugned slanderous statements, he had been seriously injured in his character, credit and reputation in the way of his professional and of his individual capacity. The defendant's defamation of him had brought him into public scandal, odium, contempt and ridicule. The defendant, in her defence, claimed that (i) in respect of the impugned statements in her police report and further impugned statements in her reply to the DB, the defendant had relied on the defence of absolute privilege; (ii) in respect of the additional impugned statements in the letter of appeal to the MB of Selangor, and the supplementary impugned statements, the defendant denied that the said statements were defamatory of the plaintiff; and (iii) in respect of the impugned slanderous statements, the defendant denied that she had uttered the said slanderous statements to PW2. The defendant had also pleaded the defence of justification but failed to comply with a court order to provide further and better particulars and thus the defence of justification in the amended statement of defence was struck out.

Held (ordering accordingly):

(1) In an action for defamation, the onus lays on the plaintiff to establish, on a balance of probabilities that (i) the impugned statements referred to the plaintiff; (ii) they were published to a third person; and (iii) they had defamatory imputations. The first two ingredients, namely the further impugned statements, the additional impugned statements and the supplementary impugned statements referred to the plaintiff and were published to third persons, were agreed facts by both parties. Moreover, the supplementary impugned statements in the defendant's written submissions as 'complainant' to the DC in the disciplinary proceedings against the plaintiff, referred to the plaintiff. (paras 41 & 42)

(2) In the further impugned statements made by the defendant in her reply to the DB, the defendant had stated that the explanation given by the plaintiff to the DB was 'a lie' and that the plaintiff 'had lied.' In their

natural and ordinary meaning, the words in the further impugned statements meant that the plaintiff was a liar, which was defamatory of the plaintiff. In their natural and ordinary meaning in the defendant's additional impugned statements in her letter of appeal to the MB of Selangor, the plaintiff was a dishonest person, that he had cheated her, and that he had conspired with another individual to take over from YSB, the project relating to the Saudi properties, and that he was an unethical lawyer and a cheat. Accordingly, the additional impugned statements were defamatory of the plaintiff. (paras 50-54)

(3) The natural and ordinary meaning of the defendant's supplemental impugned statements in her written submissions in the DC proceedings, meant that the plaintiff (i) had engaged in professional misconduct by failing to give the defendant a copy of the SPA after she had signed the SPA; (ii) that he had forged the contents of the SPA for pecuniary gain; (iii) had failed to discharge his professional duty as an advocate and solicitor; and (iv) had discharged his professional duties as an advocate and solicitor in an unethical manner. Accordingly, the supplemental impugned statements were defamatory of the plaintiff. (paras 55 & 56)

(4) As regards the additional impugned statements made in her letter of appeal to the MB of Selangor, the defendant's defence was that the statements were not defamatory of the plaintiff. There was no other defence pleaded in her amended statement of defence. This court had earlier struck out her defence of justification because of her failure to provide further and better particulars. The law is settled that it is for a court to decide by applying the two-stage promulgated in the case of *Chok Foo Choo v. The China Press Bhd,* whether an impugned statement was defamatory of the plaintiff. By not pleading any other defence except that the impugned statements were not defamatory, the defendant did not avail himself of any of the applicable defences in a defamatory action. The defendant failed to establish any defence for the defamatory statements made by the defendant in additional impugned statements in her letter of appeal. (paras 58-60)

(5) As for the further impugned statements in her reply to the DB and the additional impugned statements in her written submissions to the DC, the defendant had pleaded that these impugned statements were protected by absolute privilege. The proceedings before the DB and the DC were *quasi*-judicial in nature. Hence, based on the decisions of the Federal Court in *Noor Azman Azemi v. Zahida Mohamed Rafik* and *Kinta Riverfront Hotel & Suites Sdn Bhd v. Chang Yoke Yee & Anor,* the further impugned statements and the additional impugned statements were protected by absolute privilege. (paras 63 & 64)

(6) The plaintiff pleaded that the impugned slanderous words were uttered by the defendant to PW2 on 26 January 2016 during mediation breaks at the Mediation Centre at the Sessions Court. The defendant denied making the impugned slanderous statements to PW2, who was the plaintiff's subpoena witness. PW2 testified that the defendant had stated the impugned slanderous statements to her in the court's corridor and that the defendant made the impugned slanderous statements about the plaintiff to her on more than one occasion. However, nothing in the PW2's witness statement or oral testimony showed that the statements were made on the mentioned date and place. The plaintiff had failed to prove that the impugned slanderous statements were made by the defendant at the material time and place. For this reason, the plaintiff's claim for slander against the defendant was dismissed. (paras 65-75)

(7) Express malice may be evidenced (i) extrinsically from the facts and circumstances in which the statement was made; or (ii) intrinsically from the words in the impugned statement itself. From the circumstances in which the defamatory statements were made, and from the words in the defamatory statements made by the defendant in her letter of appeal, the statements were made with express malice against the plaintiff. The plaintiff had also proved that the letter of appeal had directly resulted in PNSB ceasing to provide any further work to the plaintiff's law firm because of the defamatory statements made by the defendant against the plaintiff in the letter of appeal. Whilst the defendant's impugned statements in the letter of appeal were found to be defamatory of the plaintiff and that he had suffered severe damage to his reputation as a result of the defamation, based on the trend of quantum of damages awarded against tortfeasors in recent defamation cases, this court found that the sum of RM200,000 as damages against the defendant to be more commensurate in the circumstances. (paras 85-91)

(8) The impugned words published in the defendant's letter dated 23 February 2016 to the then MB Besar of Selangor was defamatory of the plaintiff. Accordingly, the defendant must immediately make a written public apology to the plaintiff (in a manner and wording satisfactory to the plaintiff) as well as a retraction of the defamatory statements in the newspapers and that the defendant immediately cease and desist from further defaming the plaintiff in making, publishing and/or causing any derogatory and/or defamatory statement of whatever nature in any form whatsoever. (para 92)

Case(s) referred to:

Abu Hassan Hasbullah v. Zukeri Ibrahim [2018] 3 CLJ 726 CA ***(refd)***
Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***
Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***
Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin [2018] 3 CLJ 250 HC ***(refd)***
Iftikar Ahmed Khan v. Perwira Affin Bank Bhd [2018] 1 CLJ 415 FC ***(refd)***

Janagi v. Ong Boon Kiat [1971] 1 LNS 42 HC ***(refd)***
Kinta Riverfront Hotel & Suites Sdn Bhd v. Chang Yoke Yee & Anor [2023] 1 CLJ 483 CA ***(refd)***
Lee Yoke Yam v. Chin Keat Seng [2012] 9 CLJ 833 FC ***(refd)***
Noor Azman Azemi v. Zahida Mohamed Rafik [2019] 3 CLJ 295 FC ***(refd)***
Nurul Izzah Anwar v. Tan Sri Khalid Abu Bakar & Anor [2018] 7 CLJ 622 HC ***(refd)***
Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee [2019] 3 CLJ 729 FC ***(refd)***
Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] 1 LNS 146 HC ***(refd)***
Tan Ah Hong v. CTOS Data System Sdn Bhd [2016] 1 LNS 90 CA ***(refd)***
Taylor v. Serious Fraud Office [1998] 4 All ER 801 ***(refd)***
Utusan Melayu (Malaysia) Bhd v. Othman Hj Omar [2017] 2 CLJ 413 CA ***(refd)***
Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min [2017] 1 LNS 1902 CA ***(refd)***

For the plaintiff - PY Chong & Sofiah Omar; M/s Kamaruzaman Arif & Sofiah
For the defendant - Nur Azimul Mohamad Nor; M/s Emir Mahmud & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Faizah Jamaludin J:

Introduction

[1] This is the plaintiff's action against the defendant for libel and slander. The plaintiff, Dato' Kamaruzaman bin Muhammad Ariff, claims the defendant, Puan Sri Rasidah @ Rashidah binti Abdul Rahman, had falsely and maliciously defamed him in a series of libellous and slanderous statements published on different occasions.

[2] The plaintiff is an advocate and solicitor. At all material times, he was a senior partner of the law firm Messrs Kamaruzaman Arif Amran & Chong ("KAAC"). The defendant is the founder and chairman of the foundation, Yayasan Sekebun Bunga ("YSB").

Background Facts

[3] In 2012, Permodalan Negeri Selangor Berhad ("PNSB"), a Selangor State Government company owned by Menteri Besar Incorporated, agreed to sell to YSB, PNSB's right to the lease of certain units in the Al Marwa Tower in Mekah, Saudi Arabia ("the Saudi properties").

[4] In the sales and purchase agreement dated 6 March 2012 ("SPA") between PNSB and YSB, PNSB was represented by KAAC. The SPA was executed underseal by both parties. The defendant as a director of YSB, was one of the witnesses before whom YSB's common seal was affixed. The evidence shows that four copies of the SPA executed by YSB were forwarded by a law firm, Messrs Hafidz & Co, to KAAC on 30 December 2011. And

that KAAC had forwarded the four copies of SPA to PNSB for their execution on 5 January 2012. A copy of the stamped copy of the SPA was forwarded by KAAC to YSB on 8 March 2012.

[5] Pending completion of the SPA, YSB had appointed agents to manage the Saudi properties, to account for the rental received and to pay PNSB 80% of the net rental received from the Saudi properties.

[6] YSB did not pay PNSB any of its share of the rental received from the Saudi properties. Consequently, in July 2013, PNSB commenced a civil suit at the Shah Alam Sessions Court Suit No. B52-157-07/2013 (the "civil suit") against YSB and two other companies, which PNSB alleged the proceeds of the rental received from the Saudi properties were channelled to.

[7] YSB also failed to pay the balance of the purchase price due under the SPA. After sending numerous letters of demand to YSB, on 20 August 2013, PNSB, through its solicitors, KAAC, terminated the SPA and forfeited the deposit paid by YSB. PNSB also demanded YSB deliver vacant possession of the Saudi properties. The evidence shows that PNSB in an email dated 1 August 2013, had instructed KAAC to terminate the SPA with YSB since the completion date and extended completion date had expired under the SPA. PNSB had stated in the email that they will forfeit the deposit paid by YSB as stipulated under cl. 6.1.3(b) of the SPA.

[8] After PNSB had terminated the SPA and forfeited YSB's deposit, the defendant made the following publications against the plaintiff. The impugned statements in these publications are the subject matter of this action by the plaintiff against the defendant.

Police Report

[9] On 2 December 2013, the defendant made a police report against the plaintiff ("the police report"). In the police report, the defendant alleged the SPA was dated late and stamped late. She also alleged that the contents of the SPA were altered because the initial appearing on each page of the SPA was not hers.

Reply To DB

[10] On 4 February 2015, the defendant filed a complaint of misconduct against the plaintiff to the Advocates and Solicitors Disciplinary Board ("the DB").

[11] The defendant's complaint to the DB was not about the allegations she had made against the plaintiff in the said police report. Her complaint related to PNB's civil action against YSB. The defendant stated in her complaint that the plaintiff had included in the bundle of documents in the civil suit, a statutory declaration of a witness knowing that the witness had affirmed the statutory declaration before the plaintiff and not a Commissioners for Oaths.

[12] The plaintiff gave the DB his written explanation of the complaint in a letter dated 12 June 2015. The defendant in her reply letter dated 6 July 2015 to the DB (the "reply"), stated that the plaintiff's explanation was a lie.

Written Submissions To DC

[13] A disciplinary committee (the "DC") was empanelled to enquire into the complaint against the plaintiff. In their written submission to the DC dated 28 February 2017, the defendant's solicitors included, *inter alia*, by way of additional events, the defendant's allegations in the police report against the plaintiff (the "additional allegations").

[14] The DC found against the plaintiff and recommended that cause for disciplinary action exists. Nonetheless, on 17 November 2017, the DB after hearing the objections raised by the plaintiff, ordered that the complaint against him be dismissed.

Letter To The Menteri Besar Of Selangor

[15] On 23 February 2016, the defendant wrote to the then Menteri Besar of Selangor, Dato' Seri Mohamed Azmin bin Ali, where she appealed against the forfeiture of YSB's deposit under the SPA (the "letter of appeal"). In her letter of appeal to the MB of Selangor, the defendant referred to the police report and repeated the allegations she had made against the plaintiff in the said police report.

The Plaintiff's Case

Libel

[16] The plaintiff's case is that the contents of the defendant's (i) police report, (ii) the contents of her reply to the DB, (iii) the contents of her additional allegations to the DC, and (iv) the contents of her letter of appeal to the MB of Selangor, were defamatory of the plaintiff.

Police Report

[17] During the trial, the plaintiff withdrew its claim for the alleged libel in the police report on the grounds that the publication is privileged based on the Federal Court's decision in *Lee Yoke Yam v. Chin Keat Seng* [2012] 9 CLJ 833; [2013] 1 MLJ 145; [2013] 1 AMR 189.

Reply To DB

[18] The plaintiff pleads that the defendant had defamed the plaintiff in his professional capacity as an advocate and solicitor by publishing the following statements (the "further impugned statements") in her reply to the DB:

(a) "I hereby reply that, the story/explanation in para. 3([e], 3[f] and 3[g] is a lie" (para. 2 of the reply)";

(b) "I hereby reply that, the respondent lied when he said that the fact is unknown to him until the cross examination date because ..." (para. 6 of the reply)";

(c) "So, now it is a lie when the respondent said that the fact is unknown to him until the cross-examination date" (para. 6(e) of the reply)".

[19] The plaintiff pleads that the further impugned statements in the reply referred to the plaintiff, meant and/or are understood to mean that the plaintiff is a habitual liar, and are defamatory of him.

Letter Of Appeal To The MB Of Selangor

[20] The plaintiff pleads that the following statements (the "additional impugned statements") in the defendant's letter of appeal to the MB of Selangor are defamatory of him:

(a) "Laporan polis saya adalah terhadap Dato Kamaruzaman dan Hj Mohd Nor. Saya laporkan Dato Kamaruzaman menipu dengan menukar mukasurat di dalam perjanjian tersebut. Saya juga melaporkan bahawa initial itu bukan initial saya" (para. 22 of the letter of appeal)";

(b) "Saya syak Hj Mohd Nor dan Dato Kamaruzaman sudah merancang untuk mengambil alih projek ini. Maka, sebab itu, Dato Kamaruzaman selaku peguam PNSB cepat-cepat menamatkan perjanjian ini selepas setahun saya tandatangan perjanjian walhal saya tidak mendapat sesalinan perjanjian itu. Sepatutnya berilah peluang lanjutan masa. Atau berilah semula deposit Yayasan. Saya merasa saya ditipu oleh kedua-dua Dato Kamaruzaman dan Hj Mohd Nor yang berpakat mengambilalih projek ini daripada Yayasan untuk kepentingan mereka berdua. Saya tiada bukti mereka menipu saya. Saya syak sahaja". (para. 26 of the letter of appeal)";

(c) "Sepatutnya Hj Mohd Nor yang membuat penyata sewa. Dato Kamaruzaman juga tahu bahawa hanya Hj Mohd Nor dan Dato Kamaruzaman sahaja yang tahu siapa penyewa-penyewa yang masuk apartment tersebut. Saya tidak tahu. Malahan Yayasan yang beroperasi di Malaysia juga tidak tahu. Persoalannya, mengapa firma Dato Kamaruzaman menyaman Yayasan untuk mendapatkan penyata sewaan? Sepatutnya Dato Kamaruzaman dan Hj Mohd Nor yang boleh membuat penyata sewaan tersebut. Saya syak ini adalah sebahagian cara mereka ingin menunjukkan bahawa Yayasan amat bersalah dan projek tersebut tidak diberi kepada yayasan. Sebenarnya Yayasan ialah badan kebajikan yang tidak mempunyai niat menipu tetapi niat yayasan hanyalah untuk menjalankan kerja-kerja kebajikan." (para. 27 of the letter of appeal)".

(d) "Hj Mohd Nor ialah warganegara Singapura. Isterinya telah menalipon saya dan memberitahu bahawa Hj Mohd Nor dan Dato Kamaruzaman sedang berpakat untuk ambil alih projek Mekah. Isterinya beritahu saya bahawa Hj Mohd Nor telah mambawa fail projek Mekah balik ke Singapura." (para. 28 of the letter of appeal)".

[21] The plaintiff pleads that the additional impugned statements in the letter of appeal referred to the plaintiff, were meant and/or understood to mean that the plaintiff is a crook, fraudster and a conspirator, and are defamatory of the plaintiff.

[22] The MB of Selangor's Office forwarded the letter of appeal to the CEO of PNSB for his further action. The MB of Selangor on the letter of appeal had written the words "CEO PNSB, sila teliti". The letter reads:

> Y.Bhg. Dato' Haji Ahmad bin Omar
>
> Ketua Pegawai Eksekutif/Pengarah Permodalan Negeri Selangor Berhad
>
> YBhg Dato,
>
> Perihal 5 Unit Apartment Marwa Tower Mekah Dan Yayasan Sekebun Bunga
>
> Dengan segala hormatnya merujuk kepada perkara di atas.
>
> 2. Bersama-sama ini dikemukakan minit YAB Dato' Menteri Besar bertarikh 15 Mac 2016, surat daripada Puan Sri Rashidah binti Hj Abdul Rahman yang jelas menerangkan maksudnya.
>
> 3. Sukacita dipanjangkan untuk tindakan YB Dato' selanjutnya.
>
> ...

Written Submissions In The DC Proceedings

[23] The plaintiff pleads that the following statements (the "supplementary impugned statements") in the defendant's written submissions in the proceedings before the DC, are defamatory of the plaintiff:

> (a) "The complainant was not given a copy of the sale & purchase agreement dated 6/3/2012 ("SPA") prior to the date of the writ of summon. She was not represented by any lawyer in that SPA transaction." (para. 2.1 of the Complainant's Written Submission)";
>
> (b)"When she received a copy of the SPA in the bundle of documents, she realized that, (1) the "initial" signed on every page of the SPA was not hers; (2) the proportion of profit stated in the SPA was not correct as it was not as agreed prior to the signing of the SPA." (para. 2.2 of the Complainant's Written Submission)";
>
> (c) "She was not given the SPA termination letter by the respondent's firm and was denied the opportunity to request/appeal for extension of time." (para. 2.3 of the Complainant's Written Submission)";

[24] The plaintiff pleads that since the additional allegations were raised during the summation stage of the DC proceedings, he was not afforded the opportunity to respond to these additional allegations by the defendant.

Natural And Ordinary Meaning Of The Impugned Statements

[25] The plaintiff pleads that the further impugned statements in the reply and the additional impugned statement in the letter of appeal, in their natural and ordinary meaning, meant and/or were understood to mean that the plaintiff:

(i) is a liar;

(ii) is a fraudster and had forged the contents of the SPA;

(iii) would not hesitate to commit criminal acts of forgery for financial gain;

(iv) had conspired with Hj Mohd Nor to defraud the defendant to the benefit of the plaintiff;

(v) had been negligent in expediting the execution of the SPA;

(vi) had earned secret profit(s) at the expense of the defendant;

(vii) is a corrupt and unscrupulous lawyer;

(viii) had failed to discharge his professional duties as an advocate and solicitor; and

(ix) had acted in an unethical manner in discharging his professional duties as an advocate and solicitor.

[26] The plaintiff pleads that the supplementary impugned statements in the defendant's written submissions in the DC proceedings, in their natural and ordinary meaning meant and/or were understood to mean that the plaintiff:

(i) had delayed in forwarding a copy of the SPA to the defendant, and since the defendant was unrepresented, she was deprived of the benefit of perusing through the contents of the SPA by reason of the alleged delay by the plaintiff;

(ii) had forged the contents of the SPA;

(iii) would not hesitate to commit criminal acts of forgery for financial gain;

(iv) had been negligent in failing to provide the defendant the termination letter of the SPA, which had resulted in the defendant being unable to request an extension of time to fulfil her obligation(s) under the SPA;

(v) is a corrupt and unscrupulous lawyer;

(vi) had failed to discharge his professional duties as an advocate and solicitor;

(vii) had acted in an unethical manner in discharging his professional duties as an advocate and solicitor.

Slander

[27] The plaintiff claims that on or around 26 January 2015, during mediation breaks at the Mediation Centre of the Shah Alam Sessions Court, the defendant had maliciously made slanderous remarks against the plaintiff, that she had defamed the plaintiff to PNSB's Head of Legal, Puan Nor Juanna Hilda binti Dato' Julaini ("PW2"), in the presence of solicitors of both parties ("impugned slanderous statements").

[28] The plaintiff pleads that the impugned slanderous statements made by the defendant to PW2 were:

(a) "Dato' Kamaruzaman telah merasuah pihak atas PNSB";

(b) "Dato' Kamaruzaman adalah seorang kaki perempuan"; and

(c) "Dato' Kamaruzaman berkomplot bersama Hj Mohd Nor untuk mengambil alih perniagaan dan mengambil keuntungan."

[29] It is the plaintiff's case that the impugned slanderous statements in their natural and ordinary meaning meant and/or were understood to mean that the plaintiff:

(i) had bribed the authorities of PNSB;

(ii) is a womaniser;

(iii) is a corrupt and unscrupulous lawyer;

(iv) had conspired with Hj Mohd Nor in defrauding the defendant in order to earn profit(s) at the expense of the defendant; and

(v) had acted in an unethical manner in discharging his professional duties as an advocate and solicitor.

[30] The plaintiff pleads that by reason of the communication and/or publication of (i) the libel in the further impugned statements, the additional impugned statement and the supplementary impugned statements, and (ii) the slander in the impugned slanderous statements, he had been seriously injured in his character, credit and reputation in the way of his professional and of his individual capacity. The defendant's defamation of him had brought him into public scandal, odium, contempt and ridicule.

The Defendant's Defence

[31] Impugned statements: In respect of the impugned statements in her police report, the defendant had relied on the defence of absolute privilege. As stated above, the plaintiff, during the trial of this case, had withdrawn his claim as regards the defendant's impugned statements in her police report, based on the Federal Court's decision in *Lee Yoke Yam v. Chin Keat Seng* (*supra*), which held that defamatory statements in police reports are protected by the defence of absolute privilege by reason of public policy.

[32] Further impugned statements: In respect of the further impugned statements in her reply to the DB, the defendant relies on the defence of absolute privilege.

[33] Additional impugned statements: In respect of the additional impugned statements in the letter of appeal to the MB of Selangor, the defendant denies that the said statements were defamatory of the plaintiff.

[34] Supplementary impugned statements: In respect of the supplementary impugned statements in the defendant's written submissions in the DC proceedings, the defendant denies that the statements were defamatory of the plaintiff.

[35] Impugned slanderous statements: In respect of the impugned slanderous statements, the defendant denies that she had uttered the said slanderous statements to PW2. She further denies that the impugned slanderous statements bore the defamatory meaning alleged by the plaintiff.

[36] The defendant had pleaded the defence of justification in paras. 27, 37, 49 and 59 in her amended statement of defence. On 19 November 2019, the plaintiff filed a notice of application for further and better particulars (encl. 10) as regards her defence of justification.

[37] The plaintiff's application in encl. 10 was allowed by the court on 13 February 2020. The defendant was ordered to provide further and better particulars in respect of the defence of justification in paras. 27, 37, 49 and 59 in her amended statement of defence. The order stated that if she failed to provide the further and better particulars, her defence in paras. 27, 37, 49 and 59 in respect of justification will be struck out by the court.

[38] The defendant did not comply with the court's order. The "further and better particulars" provided by the defendant in respect of her defence of justification were a repetition of the pleadings in paras. 27, 37, 49 and 59 in her amended statement of defence.

[39] The plaintiff applied in encl. 25 for the defence of justification in paras. 27, 37, 49 and 59 in her amended statement of defence be struck out by reason of the defendant's failure to provide further and better particulars.

[40] The plaintiff's application in encl. 25 was allowed by this court. The defence of justification in paras. 27, 37, 49 and 59 in the amended statement of defence was struck out pursuant to the court order of 8 September 2020. The defendant did not appeal against the said order.

Law On Defamation

[41] The law is settled that in an action for defamation:

(i) the onus lies on the plaintiff to establish, on a balance of probabilities, that (a) the impugned statements referred to the plaintiff, (b) they were published to a third person, and (c) they had defamatory imputations;

(ii) once the plaintiff has proven all the three ingredients, the burden of proof shifts to the defendant to establish her defence; and

(iii) if the defendant fails to establish her defence on a balance of probabilities, the plaintiff will be entitled to judgment.

See *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; [1989] 1 MLJ 315 HC; *Raub Australian Gold Mining Sdn Bhd v. Hue Shieh Lee* [2019] 3 CLJ 729; [2019] 3 MLJ 720; [2019] 2 AMR 525 FC.

Analysis And Findings Of This Court

Did The Impugned Statements Refer To The Plaintiff And Were They Published To Third Persons?

[42] The first two ingredients, namely the further impugned statements, the additional impugned statements and the supplementary impugned statements referred to the plaintiff and were published to third persons, are agreed facts by both parties: see fakta-fakta yang dipersetujui (encl. 50). Moreover, it is clear that the supplementary impugned statements in the defendant's written submissions as "complainant" to the DC in the disciplinary proceedings against the plaintiff, referred to the plaintiff who was the "respondent".

[43] Furthermore, the defendant had admitted in her amended statement of defence that she had made the impugned statements in the police report, the further impugned statements in her reply to the DB, the additional impugned statements in her letter of appeal to the MB of Selangor and the supplementary impugned statements in her written submissions in the DC proceedings: see paras. 9 to 12 of her amended statement of defence.

[44] Thus, what remains for this court to determine is whether the impugned statements are defamatory of the plaintiff.

Are the Impugned Statements Defamatory Of The Plaintiff?

[45] In *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371; [1999] 1 AMR 753, the Court of Appeal laid down the test to be undertaken by a trial court in determining whether an impugned statement is defamatory. It is a two-staged objective test:

first: whether the words complained of are capable of bearing a defamatory meaning.

second: if the answer is in the affirmative, whether the words are in fact defamatory.

[46] The Court of Appeal held that in Malaysia, the answers to both these questions are to be decided by a judge alone. Gopal Sri Ram JCA in delivering the judgment of the Court of Appeal in *Chok Foo Choo* held:

> It cannot, I think, be doubted that *the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning*. And it is beyond argument that *this is in essence a question of law that turns upon the construction of the words published*.

A ...

Having decided whether the words complained of are capable of bearing a defamatory meaning, the next step in the inquiry is for a court to ascertain whether the words complained of are in fact defamatory. This is a question of fact dependent upon the circumstances of the particular case. In England, libel actions are
B tried by judge and jury and the question is left for the jury to determine. However, in this country, *libel actions are tried by a judge alone, he is the sole arbiter of questions of law as well as questions of fact. He must, therefore, make the determination*. (emphasis added)

[47] The test in *Chok Foo Choo* has been cited with approval and used in
C subsequent High Court and Court of Appeal cases: see *Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min* [2017] 1 LNS 1902; [2017] MLJU 2272; [2017] AMEJ 1548; *Abu Hassan Hasbullah v. Zukeri Ibrahim* [2018] 3 CLJ 726; *Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin* [2018] 3 CLJ 250; [2018] 6 MLJ 396; [2017] AMEJ 1321; *Utusan Melayu (Malaysia) Bhd v. Othman Hj Omar* [2017] 2 CLJ 413; [2017] 2 MLJ 800; *Tan Ah Hong v. CTOS Data*
D *System Sdn Bhd* [2016] 1 LNS 90.

[48] The test of a defamatory nature in a statement is its tendency to excite against the plaintiff, the adverse opinion of others: *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 1 LNS 146; [1973] 2 MLJ 56.

E **[49]** In *Chok Foo Choo*, the Court of Appeal held that the test as to whether a statement is defamatory lies in the question:

> Do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part?

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Findings Of This Court

Further Impugned Statements

[50] In the further impugned statements made by the defendant in her reply to the DB, the defendant had stated that the explanation given by the plaintiff
G to the DB was "a lie" and that the plaintiff "had lied" when he said the fact was unknown to him until cross-examination of the witness.

[51] I find that in their natural and ordinary meaning, the words in the further impugned statements mean that the plaintiff is a liar.

H **[52]** Accordingly, I find that the further impugned statements are defamatory of the plaintiff.

Additional Impugned Statements

[53] I find that in their natural and ordinary meaning in the defendant's
I additional impugned statements in her letter of appeal to the MB of Selangor, mean that the plaintiff is a dishonest person, that he had cheated her, that he had conspired with Hj Mohd Nor to take over from YSB, the project relating to the Saudi properties, and that he is an unethical lawyer and a cheat.

[54] Accordingly, I find that the additional impugned statements are defamatory of the plaintiff.

Supplemental Impugned Statements

[55] I find that in their natural and ordinary meaning in the defendant's supplemental impugned statements in her written submissions in the DC proceedings, means that the plaintiff had engaged in professional misconduct by failing to give the defendant a copy of the SPA after she had signed the SPA; that he had forged the contents of the SPA for pecuniary gain; had failed to discharge his professional duty as an advocate and solicitor or had discharged his professional duties as an advocate and solicitor in an unethical manner.

[56] Accordingly, I find that the supplemental impugned statements are defamatory of the plaintiff.

Has The Defendant Discharged Her Burden Of Proof In Establishing Her Defence?

[57] As stated in para. [41] above, the law is settled: after this court has found that the impugned statements in the further impugned statements, the additional impugned statements and the supplemental impugned statements are defamatory of the plaintiff, the burden of proof shifts to the defendant to prove her defence on a balance of probabilities.

Additional Impugned Statements

[58] As regards the additional impugned statements made in her letter of appeal to the MB of Selangor, the defendant's defence is that the statements are not defamatory of the plaintiff. At the time of the trial, there were no other defence pleaded in her amended statement of defence. This court had earlier struck out her defence of justification because of her failure to provide further and better particulars.

[59] The law is settled that it is for a court to decide by applying the two-stage promulgated in *Chok Foo Choo*, whether an impugned statement is defamatory of a plaintiff. By not pleading any other defence except that the impugned statements are not defamatory, the defendant did not avail herself of any of the applicable defences in a defamatory action.

[60] Accordingly, this court finds that the defendant had failed to establish any defence for the defamatory statements made by the defendant in additional impugned statements in her letter of appeal.

Further Impugned Statements And Additional Impugned Statements

[61] As for the further impugned statements in her reply to the DB and the additional impugned statements in her written submissions to the DC, the defendant pleads that these impugned statements are protected by absolute privilege.

[62] The Federal Court in *Noor Azman Azemi v. Zahida Mohamed Rafik* [2019] 3 CLJ 295; [2019] 3 MLJ 141 ("*Zahida Rafik*") citing the House of Lords' decision in *Taylor v. Serious Fraud Office* [1998] 4 All ER 801 held that absolute privilege would not attach to the subsequent publication for a police report save where the contents were made in or in connection with judicial or *quasi*-judicial proceedings.

[63] I would like to thank learned counsel of the plaintiff, Mr PY Chong, for bringing to this court's attention in his submissions, the recent Court of Appeal decision in *Kinta Riverfront Hotel & Suites Sdn Bhd v. Chang Yoke Yee & Anor* [2023] 1 CLJ 483; [2023] 1 AMR 509; [2023] 1 MLJ 84 ("*Kinta Riverfront Hotel*"), which at the time of submissions was yet to be reported. The Court of Appeal in *Kinta Riverfront Hotel*, held as long as the defamation was published within the four corners of court proceedings, the defendant may avail himself of the defence of absolute privilege even though the impugned averments were irrelevant, reckless and perhaps malicious.

[64] I find that the proceedings before the DB and the DC are *quasi*-judicial in nature. Hence, based on the decisions of the Federal Court in *Zahida Rafik* and the Court of Appeal in *Kinta Riverfront Hotel*, which under the doctrine of *stare decisis* are binding on this court, I find that the further impugned statements and the additional impugned statements are protected by absolute privilege.

Slander

[65] The defendant denied that she had made the impugned slanderous statements to PW2, who was the plaintiff's subpoena witness.

[66] PW2 testified that she had met the defendant at the Shah Alam Sessions Court in connection with the civil suit brought by PNSB against YSB and two other companies. PW2 is the Head of PNSB's Legal Department.

[67] PW2 testified that the defendant had uttered to her, the impugned slanderous statements about the plaintiff, in the court's corridor.

[68] I find PW2 to be a witness of truth. She had remained unshaken under cross-examination – she denied the defendant's counsel's suggestion that the conversation between her and the defendant was merely about the civil suit and not about the plaintiff.

[69] In contrast, I find the defendant to be a very evasive witness with a somewhat selective memory as to what she says she can and cannot remember.

[70] The plaintiff had pleaded that the impugned slanderous words were uttered by the defendant to PW2 on 26 January 2015 during mediation breaks at the Mediation Centre at the Shah Alam Sessions Court.

[71] PW2 testified that the defendant had stated the impugned slanderous statements to her in the court's corridor. PW2 also said that the defendant made the impugned slanderous statements about the plaintiff to her on more than one occasion. However, nothing in the PW2's witness statement or oral testimony showed that the statements were made on 26 January 2015 during mediation breaks at the mediation centre at the Shah Alam Sessions Court.

[72] While I believe, on based, PW2's testimony, that the defendant had uttered the impugned slanderous statements to her at the Shah Alam Sessions Court, I find that the plaintiff had failed to prove that the impugned slanderous statements were made by the defendant on 26 January 2015 during the mediation breaks at the Mediation Centre at the Shah Alam Sessions Court.

[73] It is trite law that parties are bound by their pleadings: see *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42; [1971] 2 MLJ 196; *Iftikar Ahmed Khan v. Perwira Affin Bank Bhd* [2018] 1 CLJ 415; [2017] 8 AMR 517; [2017] AMEJ 1427, FC.

[74] Accordingly, I find that the plaintiff had failed to prove its pleaded case that the defendant had made the impugned slanderous statements on 26 January 2015 during the mediation breaks at the Mediation Centre at the Shah Alam Sessions Court.

[75] For this reason, the plaintiff's claim for slander against the defendant is dismissed.

Quantum Of Damages

[76] The plaintiff prayed for this court to award a global sum of RM1,000,000 for general and aggravated damages to compensate him for the injury to his reputation caused by the defendant's defamation.

[77] This court had found that from their ordinary and natural meaning, the impugned statements in the letter of appeal were defamatory of the plaintiff. The statements had imputed onto the plaintiff dishonour and lack of integrity and had also lowered the plaintiff in the estimation of right-thinking members of society and his reputation and character as an advocate and solicitor.

[78] Proof of such lowering of his estimation among right-thinking members of society, was the action that his client, PNSB, took after the letter of appeal was forwarded by the MB of Selangor's office to the CEO of PNSB.

[79] PW2 had testified that PNSB's CEO instructed her to cease from giving any further work to the plaintiff's law firm, KAAC, after he had received the defendant's letter of appeal from the MB of Selangor's office. The defendant's defamation of the plaintiff had directly caused his law firm, KAAC, to lose work from a major client, PNSB.

[80] The defendant did not prove any truth to any of the impugned statements she had made against the plaintiff. She failed to produce the further and better particulars ordered by this court to support her defence of justification. It is trite that a defence of justification is premised on the truth of the defamatory statement made.

[81] Furthermore, throughout the trial, the defendant remained unrepentant that she had destroyed the plaintiff's reputation through her defamatory statements.

[82] From the documents produced before this court during the trial, it is undisputed that YSB did not pay the balance of the purchase price to PNSB under the SPA, and it also did not pay PNSB its share of the rental of the Saudi properties. The civil suit at the Shah Alam Sessions Court was by PNSB against YSB and two other companies. It was not by the plaintiff personally against YSB or the defendant. The evidence also showed that KAAC had sent the letter to YSB to terminate the SPA on PNSB's instructions.

[83] Also, the SPA was executed by YSB by affixing its common seal, which was witnessed by the defendant as director of YSB, and another person named Mohammad Kamal bin Mohd Affandi, as director/secretary of YSB. The defendant did not sign the SPA in her personal capacity. The copy of the SPA shows that every page has the chop of YSB and PNSB and each chop is initialled. The defendant neither pleaded nor produced any evidence that she was the person who had initialled every page in the middle of the YSB chop on the SPA. She also did not call Mohammad Kamal bin Mohd Affandi as her witness during the trial.

[84] In asking for a global award of RM1,000,000 against the defendant, learned counsel for the plaintiff had submitted:

> 79. The defamatory words in the letter of appeal had nothing to do with the subject matter of the appeal by the defendant which was to seek a waiver from the State Government of Selangor of the forfeiture of the deposit.
>
> 80. They were clearly false and maliciously published. They were premeditated and targeted by the defendant to destroy the plaintiff's career and rob him of his rice bowl. The defamation was aimed at attacking the credibility and reputation of the plaintiff as a senior practicing advocate and solicitor and resulted in maximum damage as the letter of appeal was forwarded to the client of the plaintiff's firm *ie*, PNSB and PW2, the General Manager of the Legal Department of PNSB was instructed by the CEO of PNSB to halt all new legal work, to the plaintiff resulting in substantial financial loss to the plaintiff.

[85] Express malice may be evidenced extrinsically from the facts and circumstances in which the statement was made; or intrinsically from the words in the impugned statement itself: see *Nurul Izzah Anwar v. Tan Sri Khalid Abu Bakar & Anor* [2018] 7 CLJ 622; [2018] 4 AMR 175; [2018] AMEJ 0430.

[86] I find that (i) from the circumstances in which the defamatory statements were made, and (ii) from the words in the defamatory statements made by the defendant in her letter of appeal, the statements were made with express malice against the plaintiff.

[87] The plaintiff had also proven that the letter of appeal had directly resulted in PNSB ceasing to provide any further work to the plaintiff's law firm because of the defamatory statements made by the defendant against the plaintiff in the letter of appeal.

[88] However, the plaintiff did not provide any evidence as to how the RM1,000,000 in damages was calculated. He also did not provide any evidence of the legal fees that they had lost by reason of PNSB ceasing to give his law firm any further work, or any evidence of the legal fees received by the firm from PNSB for the work done prior to the termination.

[89] I note that the plaintiff is a senior lawyer. I also note that although he is the first named partner in the law firm that he founded, KAAC, he was no longer a partner of the said firm at the time of the trial. However, he did not provide any evidence of how much is his loss/reduction of income resulted from the defamation.

[90] Whilst I find that the defendant's impugned statements in the letter of appeal to be defamatory of the plaintiff and that he had suffered severe damage to his reputation as a result of the defamation, based on the trend of quantum of damages awarded against tortfeasors in recent defamation cases, I am unable to award the sum of RM1,000,000 against the defendant.

[91] I find that the sum of RM200,000 as damages against the defendant to be more commensurate in the circumstances.

Decision

[92] For the reasons above, this court finds that the impugned words published in the defendant's letter dated 23 February 2016 to the then Menteri Besar of Selangor, Dato' Seri Mohamed Azmin bin Ali, is defamatory of the plaintiff.

[93] Accordingly, this court makes the following orders:

(i) that the defendant immediately makes a written public apology to the plaintiff (in a manner and wording satisfactory to the plaintiff) as well as a retraction of the defamatory statements in Berita Harian and The Star newspapers;

A (ii) that the defendant immediately cease and desist from further defaming the plaintiff in making, publishing and/or causing any derogatory and/or defamatory statement of whatever nature in any form whatsoever;

(iii) that the defendant pay damages to the plaintiff in the sum of RM200,000;

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(iv) interest at the rate of 5% per annum on the sum of RM200,000 from the date of judgment until the date of full payment; and

(v) that the defendant pays the plaintiff costs in the sum of RM20,000 subject to the allocator fee.

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Order

[94] So ordered accordingly.

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